

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

SAILORS, INC. and MISSISSIPPI RIVER
REVIVAL,

Plaintiffs.

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.

Defendants.

Consolidated

Case No. C98-134-MJM

ORDER ON
JOINT MOTION TO ENTER
CONSENT DECREE

SIERRA CLUB.

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.

Defendants.

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA
DEC 17 2001
CEDAR RAPIDS HOCHSTETTER CITY
BY [Signature]

Upon consideration of the joint motion for entry of the consent decree, it is hereby
ordered that the motion is granted and the consent decree shall be entered as the order of this
Court.

Executed this 17th day of Dec., 2001.

[Signature]
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

FILED
DEC 17 2001
PH 3:35

SAILORS, INC. and MISSISSIPPI RIVER
REVIVAL,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.^y

Defendants.

Consolidated
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FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA
DEC 17 2001
CEDAR RAPIDS HOODING OFFICE
BY

SIERRA CLUB,

Plaintiff,

CONSENT DECREE

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.

Defendants.

WHEREAS, this case involves claims by Sailors, Inc. and Mississippi River Revival, and Sierra Club ("Plaintiffs") under the Clean Water Act, 33 U.S.C. § 1251, et seq. ("Act or CWA"), and the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"), to compel the United States Environmental Protection Agency, Christine T. Whitman, Administrator, and William W. Rice, Acting Regional Administrator, EPA Region VII, (collectively "EPA") to identify waters

^y Christine T. Whitman and William W. Rice are hereby substituted for as defendants in this matter pursuant to Fed. R. Civ. P. 25(d)(1).

22/21

Dec-18-2001 03:26pm From-US ATTORNEY NDIA

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T-886 P.004

F-777

ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The foregoing Consent Decree is hereby APPROVED.

SIGNED AND ENTERED this 17th day of Dec, 2001.


UNITED STATES DISTRICT JUDGE

Copies to:

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

01 OCT 26 PM 3:36

CEDAR RAPIDS DISTRICT OFFICE

SAILORS, INC. and MISSISSIPPI RIVER
REVIVAL,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,^{1/}

Defendants.

Consolidated

Case No. C98-134-MJM^{RY}

SIERRA CLUB,

Plaintiff,

v.

JOINT MOTION TO ENTER
CONSENT DECREE

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

The United States Environmental Protection Agency and plaintiffs in the above captioned matters hereby move the Court to enter as an Order of the Court the Consent Decree filed on this same day.

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

^{1/} Christine T. Whitman and William W. Rice are hereby substituted for as defendants in this matter pursuant to Fed. R. Civ. P. 25(d)(1).

Dated: 10/11/01

By: Eileen McDonough

EILEEN MCDONOUGH

Environmental Defense Section

Environment and Natural Resources Division

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United States Attorney

Northern District of Iowa

Dated 22 October 2001

By: Robert M. Butler

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FOR PLAINTIFFS:

Dated: 10/18/2001

By: J. F. McLellan

Lawrence P. McLellan, Esq.

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Des Moines, IA 50309-2719

Dated: 10/19/01

By: J. S. Anderson
Jerry Anderson, Esq.
Associate Dean and Professor
Drake University Law School
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Des Moines, IA 50311-4505

Dated: 10-19-01

By: Wallace L. Taylor
Wallace L. Taylor, Esq.
118 Third Avenue, S.E., Suite 326
Cedar Rapids, IA 52401

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

01 OCT 26 PM 3:36

CEDAR RAPIDS HOUSING OFFICE

SAILORS, INC. and MISSISSIPPI RIVER
REVIVAL,

Plaintiffs,

v.

Consolidated

Case No. C98-134-MJM

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,^{1/}

Defendants.

SIERRA CLUB,

Plaintiff,

CONSENT DECREE

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

WHEREAS, this case involves claims by Sailors, Inc. and Mississippi River Revival, and Sierra Club ("Plaintiffs") under the Clean Water Act, 33 U.S.C. § 1251, et seq. ("Act or CWA"), and the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"), to compel the United States Environmental Protection Agency, Christine T. Whitman, Administrator, and William W. Rice, Acting Regional Administrator, EPA Region VII, (collectively "EPA") to identify waters

^{1/} Christine T. Whitman and William W. Rice are hereby substituted for as defendants in this matter pursuant to Fed. R. Civ. P. 25(d)(1).

for listing pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), and to establish Total Maximum Daily Loads ("TMDLs") for those waters;

WHEREAS, Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7(b), (c), (d), and (e), provide for (1) identification of waters for which applicable technology-based and other required controls are not stringent enough to implement water quality standards (the "Section 303(d) List"); (2) establishment of a priority ranking for such waters; and (3) establishment of TMDLs for pollutants for which those waters are not in attainment with water quality standards;

WHEREAS, in the complaints filed in this action, Plaintiffs allege inter alia, that EPA has violated the CWA and/or the APA in the following manner:

- a. Failure to adopt water quality standards for nonpoint source pollutants such as sediment, nutrients and pesticides, and EPA's failure to approve or disapprove Iowa's 1994 and 1996 water quality standards;
- b. Failure to establish appropriate monitoring methods and procedures for the State of Iowa and failure to withhold grants to the State;
- c. Failure to ensure that the State of Iowa has established and maintained a Continuing Planning Process ("CPP") consistent with the CWA;
- d. Failure to identify water quality limited segments still requiring TMDLs in Iowa;
- e. Failure to establish TMDLs in Iowa; and
- f. Failure to incorporate TMDLs in NPDES permits.

WHEREAS, the APA provides for judicial review of agency action made reviewable by statute or final agency action for which there is no other adequate remedy in court to determine whether such action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or unlawfully withheld or unreasonably delayed, 5 U.S.C. §§ 704, 706;

WHEREAS, the State of Iowa has lead responsibility for the identification and prioritization of waters still requiring TMDLs and for establishment of TMDLs pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d);

WHEREAS, in order to resolve this lawsuit, Plaintiffs and EPA also have entered into a Settlement Agreement that has been filed separately with the Court for information purposes only, the terms of which are not incorporated into this Consent Decree and is not an enforceable order of this Court;

WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without any admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in this action;

WHEREAS, by entering into this Consent Decree, Plaintiffs and EPA do not waive or limit any claim or defense, on any grounds, related to any final agency action taken pursuant to this Consent Decree, including EPA's approval, disapproval and/or development of Section 303(d) Lists and/or establishment of TMDLs in Iowa, or to any agency inaction;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation, including a trial; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, adequate and equitable resolution of the Claims raised in this action.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed as follows:

I. PARTIES

1. The parties to this Consent Decree are Plaintiffs and EPA. The parties understand that (a) Christine T. Whitman and William W. Rice were sued in their official capacities as Administrator of the EPA and Acting Regional Administrator of EPA, Region VII, respectively, and (b) the obligations arising under this Consent Decree are to be performed by EPA and not by Christine T. Whitman or William W. Rice in their individual capacities.

II. PARTIES BOUND

2. This Consent Decree applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and EPA.

III. JURISDICTION

3. The Court retains jurisdiction for the purpose of resolving any disputes arising under the Consent Decree, and issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, or enforce the terms of this Consent Decree, and for granting any further relief as the interest of justice may require.

IV. DEFINITIONS

4. Whenever terms listed below are used in this Consent Decree, the definitions provided below shall apply. All references in this Consent Decree to sections of the United

States Code ("U.S.C."), the Code of Federal Regulations ("C.F.R.") or "implementing regulations" are to those sections in effect as of the date of entry of this Consent Decree or to any amendments to these sections when those amendments become effective.

- a. "Consent Decree" means this decree.
- b. "Clean Water Act" or "CWA" or "Act" means the Water Pollution Control Act codified at 33 U.S.C. section 1251 et seq and its amendments.
- c. "Day" means a calendar day unless expressly stated to be a working day.

In determining any period of time under this Consent Decree, where the last day or a specific date in the Consent Decree would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

- d. "Effective Date" means the date upon which this Consent Decree is entered by the Court.
- e. "EPA" means the United States Environmental Protection Agency, and its successor; Christine T. Whitman, Administrator, and William W. Rice, Acting Regional Administrator, EPA Region VII, in their official capacities and their successors.
- f. "Establish" for purposes of this Consent Decree means (1) final agency action taken by EPA on a TMDL after the proposed TMDL has been submitted for public comment by EPA or (2) final agency action taken by the State of Iowa on a TMDL after the proposed TMDL has been submitted for public comment by the State.
- g. "Execute" or "Execution" means that all parties have fully signed original counterparts to this Consent Decree and have caused such documents to be delivered to each party .

- h. "Plaintiffs" means the SAILORS, Inc., Mississippi River Revival, and the Sierra Club.
- i. "Section 303(d) List" means the list required to be submitted by Section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2), and 40 C.F.R. § 130.7(b).
- j. "Settlement Agreement" means the agreement between the parties executed concurrently with this Consent Decree.
- k. "Total Maximum Daily Load" or "TMDL" has the meaning provided at 40 C.F.R. : § 130.2(i).
- l. The "United States" means the United States of America including its officers, agencies, departments and instrumentalities.
- m. "Water Quality Limited Segment" or "WQLS" has the meaning provided at 40 C.F.R. § 130.2(j).
- n. "State" or "Iowa" means the 29th State of the Union, admitted as a sovereign State of the United States forming a Constitution and a state government, including its officers, agencies, departments and instrumentalities.

V. TERMS OF AGREEMENT

5.A. ESTABLISHMENT OF TMDLs

(1) The parties understand that the State of Iowa has primary responsibility for the establishment of TMDLs pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d). Iowa will establish TMDLs for the number of WQLSs specified in Attachment A. However, if Iowa fails to submit to EPA for approval/disapproval any TMDL in accordance with the deadlines in

Attachment A, then EPA shall establish such TMDL within eighteen (18) months of the missed deadline unless Iowa submits and EPA approves such TMDL prior to EPA establishing the TMDL.

(2).a. For purposes of measuring EPA's compliance with the milestones described in paragraph 5.A.(1) immediately above, EPA may count:

- (i) TMDL(s) established by Iowa and approved by EPA;
- (ii) TMDL(s) established by EPA; and
- (iii) WQLSs, and pollutants specified on the Section 303(d)

List for those WQLSs, that EPA determines do

not need TMDL(s) pursuant to paragraph 5.A(2)b below.

b. In fulfilling its obligations under this Consent Decree, EPA is under no obligation to establish TMDLs for any WQLSs, or any pollutants specified on the Section 303(d) List for such WQLSs that EPA determines do not need TMDLs consistent with Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and its implementing regulations, including 40 C.F.R. § 130.7(b), or are removed from Iowa's 1998 Section 303(d) List by a future list consistent with the provisions of the Clean Water Act and EPA's implementing regulations.

(3) To the extent EPA establishes TMDLs in Iowa pursuant to this Consent Decree, and for purposes of EPA deciding which TMDLs to establish pursuant to this Consent Decree, EPA is not bound by any prior Iowa TMDL selection decision or by TMDL work started but not completed by Iowa.

**5.B. EPA BACKSTOP FOR CEDAR RIVER AT CEDAR RAPIDS AND
RACCOON RIVER**

(1) Unless Iowa has established for the Cedar River at Cedar Rapids (WBID #IA 02-CED-0030-0) a TMDL for nitrates and a TMDL for fecal coliform bacteria ("the Cedar River TMDLs") by December 15, 2005, EPA will establish these two TMDLs by June 15, 2007. EPA shall have no obligation to establish a TMDL under this paragraph if:

- a. Iowa establishes and EPA approves the TMDL prior to June 15, 2007; or
- b. EPA determines that the TMDL is not required pursuant to paragraph 5.A(2)b above.

(2) Unless Iowa has established for the Raccoon River (WBID #IA 04-RAC-0010-1) a TMDL for nitrates and for the Raccoon River (WBID #IA 04-RAC-0010-2) a TMDL for fecal coliform bacteria ("the Raccoon TMDLs") by December 15, 2008, EPA will establish these two TMDLs by June 15, 2010. EPA shall have no obligation to establish a TMDL under this paragraph if:

- a. Iowa establishes and EPA approves the TMDL prior to June 15, 2010; or
- b. EPA determines that the TMDL is not required pursuant to paragraph 5.A(2)b above.

5.C. REPORTING AND MEETING

(1) On January 31st of each year after the Effective Date, EPA shall submit to Plaintiffs and the Court a report detailing EPA's progress in meeting the commitments of this

Consent Decree. The report shall include identification of TMDLs proposed or established during the previous calendar year, including:

- a. WQLSs for which EPA has proposed TMDLs during the previous calendar year, if any;
- b. WQLSs for which during the previous calendar year EPA has approved TMDLs submitted by Iowa; and
- c. any other WQLSs included on Iowa's 1998 Section 303(d) List that, during the previous calendar year, are determined not to need TMDLs pursuant to subparagraph 5.A(2)b, including a description of the basis for such determination.

(2) The report described in Section 5.C(1), above, shall include a review of EPA's compliance with any other terms of this Consent Decree during the previous calendar year.

(3) EPA and the Plaintiffs agree to meet yearly beginning nine (9) months after the Effective Date of the Consent Decree to discuss any WQLSs that, pursuant to paragraph 5.A(2)b of the Consent Decree, EPA determines do not need TMDLs or are removed from Iowa's 1998 Section 303(d) List by a future list.

5.D. SECTION 303(d) LIST

(1) In order to address Plaintiffs' concerns regarding the 1998 Section 303(d) List, EPA agrees to take the following steps:

- a. No later than thirty days after the Effective Date, EPA shall transmit the following to Iowa for consideration in developing the next Section 303(d) List: (i) the United States Geological Survey ("USGS") Technical Report 96-T005, "Rates of Sedimentation Along

Selected Backwater Transects in Pools 4, 8, and 13 of the Upper Mississippi River" (October 1996); (ii) USGS Report to Congress, "Ecological Status and Trends of the Upper Mississippi River System"(1998); (iii) Iowa DNR backwater sedimentation study of ten pools of the Mississippi, 1984 to present; (iv) Fate of Navigation Pool 19 on the Mississippi River, N.G. Bhowmik, USF& WS, 1993; (v) Sedimentation Rates and Standing Stock Estimates in Selected Sloughs of Pool 14 of the Mississippi River, T.I. Herbert, proceedings of the fifteenth annual meeting of the Mississippi River Research Consortium, 1984; (vi) Comprehensive Master Plan for the Management of the Upper Mississippi River System, Upper Mississippi River Basin Commission, 1982; and (vii) United States Army Corps of Engineers Report to Congress, "An Evaluation of the Upper Mississippi River System Environmental Management Program" (December 1997). Upon transmitting the documents described in the preceding sentence to Iowa, EPA will consider such documents to be existing and readily available water quality-related data and information for the next Section 303(d) List, but by entering into this Consent Decree, EPA is not making any determination regarding whether any Mississippi River segments should be included on that List for sediment and/or turbidity; rather, EPA is agreeing only that these documents must be considered by Iowa and EPA in making that determination.

b. If, under EPA regulations in effect as of January 1, 2002, Iowa is required to submit a Section 303(d) List in 2002, or if Iowa voluntarily submits a Section 303(d) List in 2002, EPA will determine whether such list includes Iowa WBID numbers IA 01-NEM-0040-2 (Pool 9: Lock and Dam #9 upstream to the Iowa/Minnesota state line); IA 01-NEM-0040-1 (Pool 10: Wisconsin River upstream to Lock and Dam #9); IA 01-NEM-0030-0 (Pools 10 and 11: Lock and Dam #11 at Dubuque upstream to Wisconsin River); IA

01-NEM-0020-2 (Pool 12: Catfish Creek upstream to Lock and Dam #11 at Dubuque); IA 01-NEM-0020-1 (Pools 12 and 13: Lock and Dam #13 at Clinton upstream to Catfish Creek (near Dubuque)); IA 01-NEM-0010-4 (Pool 14: Wapsipinicon River upstream to Lock and Dam #13 at Clinton); IA 01-NEM-0010-3 (Pool 14: Lock and Dam #14 upstream to Wapsipinicon River); IA 01-NEM-0010-1 (Pools 16, 17 and 18: Iowa River upstream to Lock and Dam #15 at Davenport); IA 02-ICM-0010-2 (Pools 18 and 19: Burlington Water Supply intake upstream to Iowa River); IA 02-ICM-0010-1 (Pool 19: Skunk River upstream to Burlington Water Supply intake); IA 03-SKM-0010-2 (Pool 19: Ft. Madison Waste Water Treatment Plant ("WWTP") upstream to Skunk River); and IA 03-SKM-0010-1 (Pools 19 and 20: Iowa/Missouri state line upstream to outfall of Ft. Madison WWTP) (collectively, the "Pools" or the "Mississippi River Pools") for sediment and/or turbidity. If not, EPA shall either:

- (i) determine, in accordance with 40 C.F.R. § 130.7(b), that any such Pool(s) need to be listed for sediment and/or turbidity, disapprove the omission of such Pool(s) for sediment and/or turbidity, and propose for public notice and comment an amendment that includes such Pool(s) for sediment and/or turbidity; or
- (ii) determine, in accordance with 40 C.F.R. § 130.7(b), that such Pool(s) need not be listed for sediment and/or turbidity and approve the omission of such Pool(s) for sediment and/or turbidity.

c. EPA expects Iowa to make its next listing decision in accordance with 40 C.F.R. § 130.7(b)(6) and to provide a waterbody-specific rationale justifying the

omission from the next Section 303(d) List of any of the Mississippi River Pools for sediment and/or turbidity. As part of EPA's decision pursuant to paragraph 5.D(1)b, EPA shall provide a waterbody-specific rationale justifying the omission of any such Pool(s) for sediment and/or turbidity, and EPA shall provide a copy of the decision to the Plaintiffs.

d. Within sixty (60) days of either approving Iowa's next Section 303(d) List or identifying waters to be added to Iowa's next Section 303(d) List following public notice and comment pursuant to paragraph 5.D(1)b, EPA shall:

- (i) compile a list of the Mississippi River Pools, if any, that appear for sediment and/or turbidity on the Section 303(d) List, as approved and, if necessary, supplemented by EPA; and
- (ii) file a motion to amend this Consent Decree to include such Pool(s) in Attachment A, as additional waters requiring TMDLs to be established pursuant to paragraph 5.A.

e. If, under the EPA regulations in effect as of January 1, 2002, Iowa is not required to submit a Section 303(d) List in 2002, and if Iowa does not voluntarily submit a Section 303(d) List in 2002, EPA will take the following steps:

- (i) With respect to the Mississippi River Pools, by September 30, 2002, EPA shall either: (a) determine in accordance with 40 C.F.R. Section 130.7(b), that any such Pool(s) need to be listed for sediment and/or turbidity, and propose for public notice and comment a list that includes such Pool(s) for sediment and/or turbidity; or (b) determine, in accordance with 40 C.F.R. §

130.7(b), that such Pool(s) need not be listed for sediment and/or turbidity.

(ii) With respect to a determination made under paragraph 5.D(1)(e)(i), EPA shall provide a waterbody-specific rationale justifying the omission of any Mississippi River Pool(s) for sediment and/or turbidity, and EPA shall provide a copy of the decision to the Plaintiffs.

(iii) Within sixty (60) days of EPA's final determination, following public notice and comment, that any of the Mississippi River Pools should be included on the Section 303(d) List pursuant to paragraph 5.D(1)(e)(i), EPA shall: (a) compile a list of the Mississippi River Pools, if any, that should be included on the Section 303(d) List for sediment and/or turbidity; and (b) file a motion to amend this Consent Decree to include such Pool(s) in Attachment A as additional waters requiring TMDLs to be established pursuant to paragraph 5.A.

(2) For any sediment and/or turbidity TMDLs for the Pools included on the next Iowa Section 303(d) List pursuant to paragraph (1) above that Iowa has not established by December 15, 2009, EPA shall establish such TMDLs by June 15, 2011 subject to paragraph 5.A.

(3) EPA's decision with respect to whether the Pools of the Mississippi River should be included on the next section 303(d) List for sediment and/or turbidity shall be based on

Iowa's water quality standards as applicable to sediment and/or turbidity that are in effect for Clean Water Act purposes at the time EPA makes its decision. Currently, these standards are established under Iowa Code § 455B.171 and set forth at Iowa Administrative Code §§ 61.2 and 61.3.

(4) Any Pool listed for either sediment or turbidity need not necessarily be listed for the other pollutant.

VI. SECURING COURT APPROVAL

6. Plaintiffs are to join in and support such legal proceedings as necessary to secure the Court's approval and entry of this Consent Decree.

VII. EFFECTIVE DATE

7. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court does not enter this Consent Decree, this Consent Decree shall not become effective.

VIII. TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

8. This Consent Decree shall terminate after fulfillment of the obligations in sections 5.A, 5.B and 5.D of this Consent Decree. Upon termination of this Consent Decree, this case shall be dismissed with prejudice. The parties jointly shall file the appropriate notice with the Court so that the Clerk of the Court may close the file.

IX. FORCE MAJEURE

9. The parties recognize that the performance of this Consent Decree is subject to fiscal and procurement laws and regulations of the United States, which include but are not limited to the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Consent Decree. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be extended one day for each day of the delay. EPA will provide Plaintiffs with notice as soon as is reasonably possible in the event that EPA invokes this term of the Consent Decree and will provide Plaintiffs with an explanation of EPA's basis for invoking this term. Plaintiffs may challenge the invocation of this term of the Consent Decree under the dispute resolution terms of section X of this Consent Decree, and EPA shall bear the burden of justifying its invocation of this section.

X. DISPUTE RESOLUTION

10. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other parties with written notice of the dispute and a request for negotiations. If the parties cannot reach an agreed resolution within thirty (30) days after receipt of the notice by the other parties, then any party may petition the Court to resolve the dispute.

XI. EXTENSIONS AND MODIFICATIONS

11.A Any dates set forth in the Consent Decree may be extended by written agreement of the parties and notice to the Court. To the extent the parties are not able to agree to an extension, EPA may seek a modification of this Consent Decree in accordance with the procedures specified below.

(1) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling more than thirty (30) days and provides notice to the Plaintiffs at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such automatic extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in such motion. EPA may move the Court for a longer extension.

(2) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling thirty (30) days or less, provides notice to the Plaintiffs at least fifteen (15) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by the Court on such motion, or (ii) the date sought in the modification.

(3) If EPA does not provide notice pursuant to subparagraphs 11.A(1) or 11.A(2) above, EPA may move the Court for a stay of the date for which modification is sought.

EPA shall give notice to the Plaintiffs as soon as reasonably possible of its intent to seek a modification and/or stay of the date sought to be modified.

(4) If the Court denies a motion by EPA to modify a date established by this Consent Decree, then the date for performance for which modification has been requested shall be such date as the Court may specify.

(5) Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration. The parties to this Consent Decree shall join in any such motion for expedited consideration.

11.B. This Consent Decree may be modified by written agreement of the parties and approval of the Court. Nothing in this Consent Decree or in the parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms upon a showing of good cause by any party. Good cause includes, but is not limited to, changes in the law or regulations implementing CWA Section 303 that affect EPA's commitments under this Consent Decree. It is EPA's position that the failure of Congress to appropriate sufficient funds to meet EPA's obligations in this Consent Decree would constitute good cause for the modification of this Consent Decree. EPA shall have the burden to demonstrate good cause. The Plaintiffs reserve the right to object to such request for modification.

XII. NOTICE

12. Any notice required or made with respect to this Consent Decree shall be in writing and shall be effective upon receipt. For any matter relating to this Consent Decree, the contact persons are:

For the Plaintiffs:

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5128 E. Washburn Road
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Sol Simon, Director
Mississippi River Revival
P.O. Box 315
Winona, MN 55987-0315

and

Wallace L. Taylor, Esq.
118 Third Avenue, S.E., Suite 326
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Iowa Chapter, Sierra Club
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For the United States:

Associate General Counsel, Water Law Office
Office of General Counsel (2355A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Regional Counsel
United States Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Chief
Environmental Defense Section
Environmental & Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Consent Decree.

XIII. SCOPE OF JUDICIAL REVIEW

13. Nothing in the terms of this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Consent Decree, except for the purpose of determining EPA's compliance with enforcing the terms of this Consent Decree. Nothing in this Consent Decree alters or affects the standards for judicial review of final EPA action.

XIV. AGENCY DISCRETION

14. Except as expressly provided herein, or in any amendment to this Consent Decree, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act, 33 U.S.C. §§ 1251-1387, or by general principles of administrative law.

XV. REPRESENTATIVE AUTHORITY

15. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree. By signature below, Plaintiffs and EPA consent to entry of this Consent Decree.

XVI. SEVERABILITY

16. The various terms, paragraphs, and sections contained herein shall be deemed separable and severable. If any provision of this Consent Decree is deemed invalid or unenforceable, the balance of the Consent Decree shall remain in full force and effect.

XVII. ENTIRE AGREEMENT

17. This Consent Decree and the Settlement Agreement are the entire agreement between Plaintiffs and EPA in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Consent Decree and the Settlement Agreement.

XVIII. MUTUAL DRAFTING

18. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be

inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

XIX. COUNTERPARTS

19. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XX. RELEASE BY PLAINTIFFS

20. Upon approval and entry of this Consent Decree by the Court, this Consent Decree and the Settlement Agreement (filed separately) shall constitute a complete and final settlement of all claims which were asserted, or could have been asserted, by Plaintiffs against the United States in the complaints filed in this case (Consolidated Case No. C98-134-MJM). Plaintiffs hereby release, discharge, and covenant not to assert (by way of commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or may now or hereafter have, against the United States based upon matters which were asserted, or could have been asserted, by Plaintiffs in the complaints filed in this case (consolidated Case No. C-98-134-MJM), except as provided in Section XXI .

XXI. PLAINTIFFS' RESERVATION OF RIGHTS

21. This Consent Decree does not waive or limit in any way Plaintiffs' rights except as expressly provided in this Consent Decree. Nothing in this Consent Decree shall be construed to waive or limit Plaintiffs' right to challenge or file suit regarding (1) Iowa's 2002 or subsequent Section 303(d) Lists, whether such Section 303(d) List is prepared by Iowa or by the EPA; (2) any TMDLs, whether such TMDLs are established by Iowa or by the EPA; (3) the issuance, reissuance, modification, or revocation and reissuance of NPDES permits; (4) the consideration of nonpoint sources in the identification of WQLSs under Section 303(d) of the CWA; or (5) EPA's review of Iowa's CPP; or (6) any claims for the implementation and enforcement of any TMDL developed pursuant to this Consent Decree or any other TMDL developed for a waterbody listed on the 1998 List or any subsequent section 303(d) List.

XXII. USE OF CONSENT DECREE

22. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

XXIII. COMPLIANCE WITH OTHER LAWS

23. Nothing in this Consent Decree relieves EPA of the obligation to act in a manner consistent with applicable Federal, State or local law, including the notice and comment and other provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-599, 701-706, and applicable appropriations and law. No provision of this Consent Decree shall be interpreted as or

constitute a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

XXIV. MODIFICATION TO REGULATIONS

24. During the negotiations of this Consent Decree, EPA promulgated amendments to the Agency's TMDL regulations. 65 Fed. Reg. 43, 586 (July 13, 2000). The amended regulations will not be effective until thirty (30) days after the date Congress allows EPA to implement the amended regulations. *Id.* In the event these amendments become effective or there are other future regulatory changes that any party believes will affect compliance with this Consent Decree, the parties will attempt to agree on appropriate changes to this Consent Decree, if any. If the parties cannot reach an agreement on these issues, the process set out in Paragraph 10, "Dispute Resolution," of this Consent Decree shall apply.

XXV. APPLICABLE LAW

25. This Consent Decree shall be governed and construed under the laws of the United States.

XXVI. THIRD-PARTY BENEFICIARIES

26. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

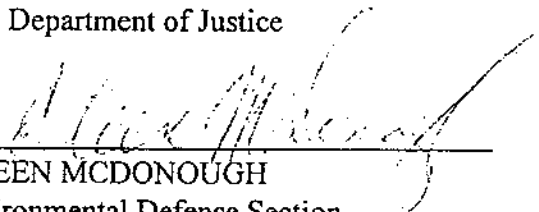
XXVII. COSTS

27. EPA agrees that Plaintiffs are prevailing parties on certain issues and are entitled to reasonable attorneys' fees and costs accrued as of the effective date of this Consent Decree on the claims asserted in their complaints. The parties will attempt to reach agreement as to the appropriate amount of the recovery. Plaintiffs shall file any request for attorneys' fees within sixty (60) days of the effective date of this Consent Decree. EPA shall have sixty (60) days to respond to Plaintiffs' fee request.

FOR THE UNITED STATES OF AMERICA:

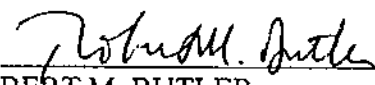
JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: 10/16/01

By: 
EILEEN MCDONOUGH
Environmental Defense Section
Environment and Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026

United States Attorney
Northern District of Iowa

Dated 22 October 2001

By: 
ROBERT M. BUTLER
Assistant United States Attorney
401 First Street, S.E. Suite 400
Cedar Rapids, IA 52401

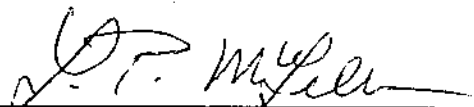
Of Counsel:

Michael G. Lee
Office of General Counsel (2355A)
U.S. Environmental Protection Agency
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Washington, D.C. 20460

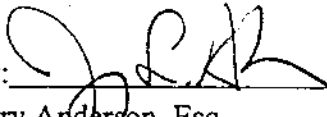
Martha R. Steincamp
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

FOR PLAINTIFFS:

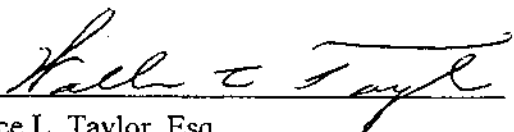
Dated: 10/18/2001

By: 
Lawrence P. McLellan, Esq.
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801 Grand Avenue, Suite 3500
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Dated: 10/19/01

By: 
Jerry Anderson, Esq.
Associate Dean and Professor
Drake University Law School
Cartwright Hall
Des Moines, IA 50311-4505

Dated: 10-19-01

By: 
Wallace L. Taylor, Esq.
118 Third Avenue, S.E., Suite 326
Cedar Rapids, IA 52401

ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The foregoing Consent Decree is hereby APPROVED.

SIGNED AND ENTERED this _____ day of _____, 2001.

UNITED STATES DISTRICT JUDGE

Copies to:

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Attachment A
Schedule for Establishing TMDLs for the 157 Waterbodies on Iowa's 1998 303(d) list

December 15, 2000

Waterbody Name: Rock Creek
Waterbody ID#: IA 01-MAQ-0010-0
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Ammonia & NO_x

Waterbody Name: Corydon Reservoir
Waterbody ID#: IA 05-CHA-00620-L
Waterbody Location:
TMDL Priority: Low
Cause of Impairment: Atrazine

Waterbody Name: Nine Eagles Lake
Waterbody ID#: IA 05-THO-00110-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Turbidity

December 15, 2001

Waterbody Name: Arrowhead Pond
Waterbody ID#: IA 06-WED-00270-L_O
Waterbody Location: Pottawattamie County, S29, T77N, R41W, 1.5 mi SE of Neola
TMDL Priority: Low
Cause of Impairment: Siltation

Waterbody Name: Binder Lake
Waterbody ID#: IA 05-NOD-00415-L_O
Waterbody Location: Adams County, S25, T72N, R34W, 1 mi NE of Corning
TMDL Priority: High
Cause of Impairment: Siltation

Waterbody Name: Bob White Lake
Waterbody ID#: IA 05-CHA-00690-L_O
Waterbody Location: Wayne County, S4, T68N, R22W, 1 mi W of Allerton
TMDL Priority: Medium
Cause of Impairment: Siltation and Nutrients

Waterbody Name:	Cedar Lake
Waterbody ID#:	IA 02-CED-02250-L_O
Waterbody Location:	Linn County, S21, T83N, R7W, in Cedar Rapids
TMDL Priority:	Medium/Low
Cause of Impairment:	Chlordane
Waterbody Name:	Fairfield Municipal Reservoir 2
Waterbody ID#:	IA-03-SKU-00955-L_O
Waterbody Location:	Jefferson County, SE 1/4, S24, T72N, R10W near Fairfield
TMDL Priority:	High
Cause of Impairment:	Siltation
Waterbody Name:	Lake Miami
Waterbody ID#:	IA 04-LDM-00280-L_O
Waterbody Location:	Monroe County, S20, T73N, R17W, 5 mi. SE of Lovilia
TMDL Priority:	Medium
Cause of Impairment:	Siltation and Nutrients
Waterbody Name:	Orient Lake
Waterbody ID#:	IA 05-NOD-00485-L_O
Waterbody Location:	Adair County, S20, T74N, R31W, approx 1 mi SW of Orient
TMDL Priority:	Low
Cause of Impairment:	Siltation
Waterbody Name:	Rock Creek Lake
Waterbody ID#:	IA 03-NSK-00340-L_O
Waterbody Location:	Jasper County, S17, T80N, R17W, 4 mi ENE of Kellogg
TMDL Priority:	High
Cause of Impairment:	Siltation and Nutrients
Waterbody Name:	Silver Lake
Waterbody ID#:	IA 01-MAQ-00680-L_O
Waterbody Location:	Delaware County, S16, T88N, R4W, SE edge of Delhi
TMDL Priority:	High
Cause of Impairment:	Nutrients and Organic Enrichment (fish kills)
Waterbody Name:	Slip Bluff Lake
Waterbody ID#:	IA 05-GRA-01015-L_O
Waterbody Location:	Decatur County, S28, T68N, R26W, 2 mi. NW of Davis City
TMDL Priority:	Medium/Low
Cause of Impairment:	Siltation and Nutrients (305(b) database indicates external turbidity)

Waterbody Name: West Lake Corning
Waterbody ID#: IA 05-NOD-00410-L_O
Waterbody Location: Adams County, S36, T72N, R34W, at N edge of Corning
TMDL Priority: High
Cause of Impairment: Siltation

Waterbody Name: Yellow Smoke Park Lake
Waterbody ID#: IA-06-BOY-00510-L_O
Waterbody Location: Crawford County, S6, T83N, R38W, 2 mi NE of Denison
TMDL Priority: Low
Cause of Impairment: Siltation

December 15, 2002

Waterbody Name: Lower Gar Lake
Waterbody ID#: IA IA 06-LSR-02830-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Turbidity and Siltation

Waterbody Name: Lake Darling
Waterbody ID#: IA 03-SKU-01450-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Siltation and Nutrients

Waterbody Name: Lake Keomah
Waterbody ID#: IA 03-SSK-00120-L
Waterbody Location:
TMDL Priority: Low
Cause of Impairment: Siltation and Aquatic Vegetation

Waterbody Name: Lake of Three Fires
Waterbody ID#: IA 05-PLA-00335-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Nutrients and Siltation

Waterbody Name: West Lake (Osceola)
Waterbody ID#: not designated
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Pesticides

Waterbody Name: Lower Pine Lake
Waterbody ID#: IA 02-IOW-0330-L
Waterbody Location:
TMDL Priority: Medium
Cause of Impairment: Aquatic Plants and Organic Enrichment

Waterbody Name: Dalton Lake
Waterbody ID#: IA 01-MAQ-01110-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Nutrients

Waterbody Name: Mud Creek
Waterbody ID#: IA 02-CED-0160-2
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Organic Enrichment

Waterbody Name: Upper Pine Lake
Waterbody ID#: IA 02-IOW-0335-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Siltation

Waterbody Name: Crystal Lake
Waterbody ID#: IA 02-IOW-04095-L
Waterbody Location:
TMDL Priority: Medium
Cause of Impairment: Aquatic Plants and Organic Enrichment

Waterbody Name: Arbor Lake
Waterbody ID#: IA 03-NSK-00330-L
Waterbody Location:
TMDL Priority: Low
Cause of Impairment: Nutrients and Siltation

Waterbody Name: Lake Icaria
Waterbody ID#: IA 05-NOD-00550-L
Waterbody Location:
TMDL Priority: High
Cause of Impairment: Siltation

Waterbody Name: Badger Creek lake
Waterbody ID#: IA 04-LDM-03080-L
Waterbody Location:
TMDL Priority: Low
Cause of Impairment: Siltation and Nutrients

Deadline	Number of Water Quality Limited Segments
12/15/03	16
12/15/04	22
12/15/05	19
12/15/06	17
12/15/07	17
12/15/08	18
12/15/09	20